

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

The Unknown Heirs, Executors,
Administrators Devisees, Trustees, Legatees,
Creditors, and Assignees of FREDERICK
JOHN ALLEN; the Unknown Spouses of the
defendants; the Unknown Stockholders,
Officers, Successors, Trustees, Creditors and
Assignees of such defendants as are existing,
dissolved or dormant corporations; the
Unknown Executors, Administrators,
Devisees, Trustees, Creditors, Successors and
Assignees of such defendants as are or were
partners or in partnership; and the Unknown
Guardians, Conservators and Trustees of such
of the defendants as are minors or are in any
way under legal disability; and the Unknown
Heirs, Executors, Administrators, Devisees,
Legatees, Trustees, Creditors and Assignees of
any Person alleged to be deceased and made
defendants as such,

Defendants.

8:18CV205

COMPLAINT

Comes now the Plaintiff by Joseph P. Kelly, United States Attorney for the District of Nebraska and Robert L. Homan, Assistant United States Attorney for this District, and for its cause of action alleges:

(1) This is a civil action brought by the United States of America under the provisions of 28 U.S.C. § 1345.

(2) Service may be made in the following manner:

(a) The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Legatees, Creditors, and Assignees of FREDERICK JOHN ALLEN; the Unknown Spouses of the defendants; the Unknown Stockholders, Officers, Successors, Trustees, Creditors and Assignees of such defendants as are existing, dissolved or dormant corporations; the Unknown Executors, Administrators, Devisees, Trustees, Creditors, Successors and Assignees of such defendants as are or were partners or in partnership; and the Unknown Guardians, Conservators and Trustees of such of the defendants as are minors or are in any way under legal disability; and the Unknown Heirs, Executors, Administrators, Devisees, Legatees, Trustees, Creditors and Assignees of any Person alleged to be deceased and made defendants as such, may be served in accordance with Neb. Rev. Stat. § 25-518.01, by publication, since the addresses of these defendants are unknown.

(3) On or about November 9, 2001, Frederick John Allen executed and delivered to the Plaintiff, United States of America, acting through the Rural Housing Service, an agency of the United States Department of Agriculture, a Promissory Note whereby he promised to pay to Plaintiff the sum of \$21,000.00, with interest thereon at 6.875 percent per annum. As consideration of the Note, Plaintiff made a Rural Housing loan to Frederick John Allen pursuant to the provisions of Title V of the Housing Act of 1949 (42 U.S.C. § 1471*et seq.*). A true and correct copy of the Note is attached as **Exhibit A**.

(4) At the same time and place and as part of the same transaction, to secure the payment of the Note, Frederick John Allen executed and delivered, to the Plaintiff, a purchase-money security interest in the form of a Real Estate Mortgage upon certain real estate in Red Willow County, Nebraska, within the jurisdiction of this court, to-wit:

Lot Eighteen (18), Block Eight (8), Original Town of McCook

This Mortgage was recorded in the Office of the Register of Deeds of Red Willow County, Nebraska, on November 9, 2001 in Book 185, at Page 763. A true and correct copy of the Mortgage is attached as **Exhibit B**.

(5) The Plaintiff is the owner and holder of the Promissory Note and Real Estate Mortgage, attached as **Exhibits A and B**.

(6) Frederick John Allen failed to pay to Plaintiff installments of principal and interest when due in violation of the provisions of the Note and Mortgage. The Plaintiff has accelerated the indebtedness and made demand for payment in full. No voluntary payment has been directly received from the borrower after acceleration.

(7) Frederick John Allen died on or about November 30, 2014.

(8) The Plaintiff claims it is owed, *in rem* pursuant to the provisions of the Promissory Note and Real Estate Mortgage, a balance of \$28,087.74, which includes \$ 23,910.72 in unpaid principal (which includes \$17,489.14 in principal, \$5,807.06 in advances, \$582.30 in escrow, and \$32.22 in late charges and any other recoverable costs); and \$4,177.02 in interest (including \$3,696.14 interest on principal and \$480.88 interest on advances), as of December 5, 2017, plus interest accruing thereafter at the daily rate of \$4.3885 (\$3.2942 on principal and \$1.0943 on advances).

(9) No other action has been brought for the recovery of the balance due.

(10) The Plaintiff has completed all loan servicing requirements of Title V of the Housing Act of 1949, 42 U.S.C. § 1471, *et seq.*

(11) The following Defendants may claim an interest in the security property:

(a) The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Legatees, Creditors, and Assignees of FREDERICK JOHN ALLEN; the Unknown Spouses of the

defendants; the Unknown Stockholders, Officers, Successors, Trustees, Creditors and Assignees of such defendants as are existing, dissolved or dormant corporations; the Unknown Executors, Administrators, Devisees, Trustees, Creditors, Successors and Assignees of such defendants as are or were partners or in partnership; and the Unknown Guardians, Conservators and Trustees of such of the defendants as are minors or are in any way under legal disability; and the Unknown Heirs, Executors, Administrators, Devisees, Legatees, Trustees, Creditors and Assignees of any Person alleged to be deceased and made defendants as such may claim an interest in the subject real property by and through the death of Frederick John Allen.

(12) The interests of all the Defendants are junior and inferior to the interests of the Plaintiff.

(13) None of the Defendants have a right to redemption after foreclosure sale herein.

WHEREFORE, the Plaintiff demands judgment in rem against the mortgaged property in the amount of \$28,087.74, which includes \$ 23,910.72 in unpaid principal (which includes \$17,489.14 in principal, \$5,807.06 in advances, \$582.30 in escrow, and \$32.22 in late charges and any other recoverable costs); and \$4,177.02 in interest (including \$3,696.14 interest on principal and \$480.88 interest on advances), as of December 5, 2017, plus interest accruing thereafter at the daily rate of \$4.3885 (\$3.2942 on principal and \$1.0943 on advances).

The Plaintiff further demands that its Mortgage be declared a first and paramount lien on the real estate described therein and that such advances as the Plaintiff may be authorized and required to pay for insurance premiums, real estate taxes, title fees, or other costs necessary to protect the security during the pendency of this proceeding to be allowed as a first and prior lien on the security.

The Plaintiff further demands that all legal right, title and interest which said Defendants have in the real estate be sold at public sale, without redemption, in accordance with 28 U.S.C. §§ 2001-2003, inclusive, and that the sale be subject to any unpaid real estate taxes or special assessments, and that the sale proceeds be applied in the following order:

- (1) Filing fees allowed pursuant to 28 U.S.C. § 2412(a)(2);
- (2) The costs of the sale and of this action;
- (3) The interest accruing on the Plaintiff's judgment *in rem* against the mortgaged property;
- (4) The Plaintiff's judgment *in rem* against the mortgaged property;
- (5) The balance, if any, be brought into this Court to await its further order.

The Plaintiff further demands that all right, title and interest in and to the real estate of Frederick John Allen, and of all persons claiming by, through or under him to be decreed to be junior and inferior to the Plaintiff's Mortgage and be absolutely barred and foreclosed.

If the purchaser of the real estate be denied possession, the Plaintiff prays that upon the filing of a proper Praecipe, this Court issue a Writ of Assistance and without further order of this Court place the purchaser of the real estate in peaceable possession.

UNITED STATES OF AMERICA, Plaintiff

JOSEPH P. KELLY
United States Attorney for the
District of Nebraska

By: s/ Robert L. Homan
ROBERT L. HOMAN, #18580
Assistant U.S. Attorney
1620 Dodge Street, Suite 1400
Omaha, NE 68102-1506
Tel: (402) 661-3700
Fax: (402) 661-3086
E-mail: robert.homan@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all registered participants. I also hereby certify that a copy of the same was served by regular mail, postage prepaid, to the following non-CM/ECF participants:

/s/ Robert L. Homan
Assistant U.S. Attorney